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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/768,996	01/24/2001	Jeffrey T. Harvey	111-005	4188

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SYRACUSE, NY 13202

EXAMINER

TRAN A, PHI DIEU N

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 05/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/768,996

Applicant(s)

HARVEY, JEFFREY T.

Examiner

Phi D A

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

***Specification***

1. The disclosure is objected to because of the following informalities: page 4 lines 26 ‘ depicted at 43 in Fig. 4’ is confusing. “ 43 “ is not on drawings.

“Geotextile material” is confusing. There is no such word in the Webster dictionary and the specification is making the meaning any clearer. The definition of the word is thus interpreted as best understood to be some kind of textile material.

Appropriate correction is required.

2. PRODUCT BY PROCESS CLAIM:

“ The subject matter present in claim 1 “ being sheared” is regarded as a product by process claim in which a product is introduced by the method in which it is made. It is the general practice of this office to examine the final product described regardless of the method provided by the applicant.”

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-9, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faulkner (5363614) in view of Cyrus et al (5924905).

Per claims 1-7, Faulkner shows a horizontally level raised terrace floor system having a plurality of spaced apart shearable-foam support pedestals (20,22) mounted upon a non-level or

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irregular substrate to produce upper surfaces on said pedestals that are horizontally level, a plurality of flat grate panels (50) being laid upon said pedestals to establish a sub floor, the grate panel being rectangular, the members being supported at each corner upon the pedestal, a plurality of cruciform joint dividers (40) set upon the pedestals so that the grates abut against the joint dividers, the foam being polystyrene, the pedestal being affixed to the substructure by means of a polystyrene adhesive (col 4 line 7), the cruciform being unaffixed to the pedestals, .

Faulkner does not show a plurality of paving blocks mounted in interlocking abutting contact upon said grates to establish an upper floor over said grates, the spacing between said pedestals being greater than the surface area of the paving blocks.

Cyrus et al (figure 10) shows pedestals forming supports, flat grate panels (98) being laid upon said pedestals to establish a sub floor, a plurality of paving blocks (108) mounted in interlocking abutting contact upon said grates to establish an upper floor over the grates, the spacing between the pedestals being greater than the surface area of said paving blocks.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Faulkner to show a plurality of paving blocks mounted in interlocking abutting contact upon said grates to establish an upper floor over said grates, the spacing between said pedestals being greater than the surface area of the paving blocks having an additional upper floor over the grates because it was known in the art to have an upper floor layer having smaller paving blocks upon the grate layer to constitute the floor layer as shown by Cyrus et al.

Per claim 8, Faulkner as modified by Cyrus et al shows all the claimed limitations except for each panel being laid in abutting contact with its neighbor.

Cyrus et al discloses each grate panel being laid in abutting contact with its neighbor.

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It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Faulkner's modified structure to show each panel being laid in abutting contact with its neighbor because it would have been an obvious matter of design choice to have the panels abutting each other since applicant has not disclosed that the panels abutting each other solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the panels abutting each other through the dividers.

Per claim 9, Faulkner as modified by Cyrus et al shows all the claimed limitations except for the panels being formed of a material selected from the group consisting of steel, aluminum, plastic and fiberglass.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have Faulkner's panel made of a material in the group of steel, aluminum, plastic, and fiberglass because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Per claim 12, Faulkner as modified by Cyrus et al shows all the claimed limitations except for the panels having a plurality of perforations passing through top and bottom surface of the panels.

Cyrus et al shows the panels having a plurality of perforations passing through top and bottom surface of the panels.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have Faulkner's panel perforated from top to bottom because it would

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reduce the weight of the panels and reduces the amount of material used which would result in cost savings.

5. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faulkner (5363614) in view of Cyrus et al (5924905) as applied to claim 1 above, and further in view of Focht (Re20872).

Faulkner as modified by Cyrus et al shows all the claimed limitations except for a sheet of protective material mounted between the top of the grate panels and the paving blocks.

Focht shows a sheet of protective material (6) mounted between the top of the grate panels (5) and paving blocks (7) to provide cushions for the floor.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have a sheet of protective material mounted between the top of the grate panels and the paving blocks because it would provide cushion to the floor as taught by Focht.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faulkner (5363614) in view of Cyrus et al (5924905) and Focht (Re20872) as applied to claim 10 above, and further in view of Smith et al (6344254).

Faulkner as modified by Cyrus et al and Focht shows all the claimed limitations except for the sheet being formed of a geotextile material.

Smith et al shows a sheet of protective material (15) providing cushion for the floor being formed of geotextile material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the sheet formed of a geotextile material because it has been held to be within the general skill of a worker in the art to select a known material on the basis of its

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suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

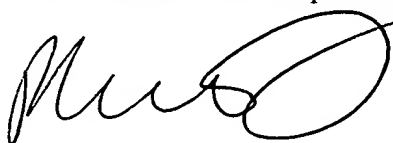
### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows different flooring systems.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 703-306-9136. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 703-308-2486. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Phi Dieu Tran A  
May 21, 2002